

to the sale in the case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the Chief, Tax Processing Center may, in that official's discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice which indicates the person's name and address does not receive, more than 5 days prior to the date of the sale, written notification from the Chief, Tax Processing Center that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the Chief, Tax Processing Center with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the Chief, Tax Processing Center. The acknowledgment by the Chief, Tax Processing Center will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The Chief, Tax Processing Center is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of this section insofar as disclosure is authorized under 26 U.S.C. 6103. Any person desiring this information should submit to the Chief, Tax Processing Center a written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

(26 U.S.C. 7425(c))

**§ 70.206 Discharge of liens; redemption by United States.**

(a) *Right to redeem—(1) In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien or a title derived from the enforcement of a tax lien, the regional director (compliance) may redeem the

property within the redemption period (as described in paragraph (a)(2) of this section). The right of redemption of the United States exists under 26 U.S.C. 7425(d) even though the Chief, Tax Processing Center has consented to the sale under 26 U.S.C. 7425(c)(2) and § 70.205(b) of this part. For purposes of this section, the term “nonjudicial sale” shall have the same meaning as used in § 70.204(a) of this part.

(2) *Redemption period.* For purposes of this section, the redemption period shall be:

(i) The period beginning with the date of the sale (as determined under § 70.204(b)) and ending with the 120th day after such date, or

(ii) The period for redemption of real property allowable with respect to other secured creditors, under the local law of the place where the real property is located, whichever expires later. Which ever period is applicable, 26 U.S.C. 7425 and this section shall govern the amount to be paid and the procedure to be followed.

(3) *Limitations.* In the event a sale does not ultimately discharge the property from tax lien (whether by reason of local law or the provisions of 26 U.S.C. 7425(b)), the provisions of this section do not apply because the tax lien will continue to attach to the property after the sale. In a case in which the Bureau is not entitled to a notice of sale under 26 U.S.C. 7425(b) and § 70.205 of this part, the United States does not have a right of redemption under 26 U.S.C. 7425(d). However, in such a case, if a tax lien has attached to the property at the time of sale, the United States has the same right of redemption, if any, which is afforded similar creditors under the local law of the place in which the property is situated.

(b) *Amount to be paid—(1) In general.* In any case in which a regional director (compliance) exercises the right to redeem real property under 26 U.S.C. 7425(d), the amount to be paid is the sum of the following amounts:

(i) The actual amount paid for the property (as determined under paragraph (b)(2) of this section) being redeemed (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the

amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale);

(ii) Interest on the amount paid (described in paragraph (b)(1)(i) of this section) at the sale by the purchaser of the real property computed at the rate of 6 percent per annum for the period from the date of the sale (as determined under § 70.204(b) of this part) to the date of redemption;

(iii) The amount, if any, equal to the excess of the expenses necessarily incurred to maintain such property (as determined under paragraph (b)(3) of this section) by the purchaser (and the purchaser's successor in interest, if any) over the income from such property realized by the purchaser (and the purchaser's successor in interest, if any) plus a reasonable rental value of such property (to the extent the property is used by or with the consent of the purchaser or the purchaser's successor in interest or is rented at less than its reasonable rental value); and

(iv) The amounts, if any, of a payment made by the purchaser or the purchaser's successor in interest after the foreclosure sale to a holder of a senior lien (to the extent provided under paragraph (b)(4) of this section).

(2) *Actual amount paid.* (i) The actual amount paid for property by a purchaser, other than holder of the lien being foreclosed, is the amount paid by the purchaser at the sale. For purposes of this paragraph, the amount paid by the purchaser at the sale includes deferred payments upon the bid price. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount bid and paid for the property. For example, the actual amount paid does not normally include the expenses of the purchaser such as title searches, professional fees, or interest on debt incurred to obtain funds to purchase the property.

(ii) In the case of a purchaser who is the holder of the lien being foreclosed, the actual amount paid is the sum of:

(A) The amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale and

(B) Any additional amount bid and paid at the sale.

For purposes of this section, a purchaser who acquires title as a result of a nonjudicial foreclosure sale is treated as the holder of the lien being foreclosed if a lien (or any interest reserved, created, or conveyed as security for the payment of a debt or fulfillment of other obligation) held by the purchaser is partially or fully satisfied by reason of the foreclosure sale. For example, a person whose title is derived from a tax deed issued under local law shall be treated as a purchaser who is the holder of the lien foreclosed in a case where a tax certificate, evidencing a lien on the property arising from the payment of property taxes, ripens into title. The amount paid by a purchaser at the sale includes deferred payments upon any portion of the bid price which is in excess of the amount of the lien being foreclosed. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount of the lien being foreclosed which is legally satisfied by reason of the sale or in the amount bid and paid at the sale. Where the lien being foreclosed attaches to other property not subject to the foreclosure sale, the amount legally satisfied by reason of the sale does not include the amount of such lien that attaches to the other property. However, for purposes of the preceding sentences, the amount of the lien that attaches to the other property shall be considered to be equal to the amount by which the value of the other property exceeds the amount of any other senior lien on that property. Where, after the sale, the holder of the lien being foreclosed has the right to the unpaid balance of the amount due the holder, the amount legally satisfied by reason of the sale does not include the amount of such lien to the extent a deficiency judgment may be obtained therefor. However, for purposes of the preceding sentence, an amount, with respect to which the holder of the lien being foreclosed would otherwise have a right to a deficiency judgment, shall be considered to be legally satisfied by reason of the foreclosure sale to the extent that the holder has waived the holder's right to a deficiency judgment prior to

the foreclosure sale. For this purpose, the waiver must be in writing and legally binding upon the foreclosing lienholder as of the time the sale is concluded. If, prior to the foreclosure, payments have been made by the foreclosing lienholder to a holder of a superior lien, the payments are included in the actual amount paid to the extent they give rise to an interest which is legally satisfied by reason of the foreclosure sale.

(3) *Excess expenses incurred by purchaser.* (i) Expenses necessarily incurred in connection with the property after the foreclosure sale and before redemption by the United States are taken into account in determining if there are excess expenses payable under paragraph (b)(1)(iii) of this section. Expenses incurred by the purchaser prior to the foreclosure sale are not considered under paragraph (b)(3) of this section. (See paragraph (b)(2)(ii) of this section for circumstances under which such expenses may be included in the amount to be paid.) Expenses necessarily incurred in connection with the property include, for example, rental agent commissions, repair and maintenance expenses, utilities expenses, legal fees incurred after the foreclosure sale and prior to redemption in defending the title acquired through the foreclosure sale, and a proportionate amount of casualty insurance premiums and ad valorem taxes. Improvements made to the property are not considered as an expense unless the amounts incurred for such improvements are necessarily incurred to maintain the property.

(ii) At any time prior to the expiration of the redemption period applicable under paragraph (a)(2) of this section, the regional director (compliance) may, by certified or registered mail or hand delivery, request a written itemized statement of the amount claimed by the purchaser or the purchaser's successor in interest to be payable under paragraph (b)(1)(iii) of this section. Unless the purchaser or the purchaser's successor in interest furnishes the written itemized statement within 15 days after the request is made by the regional director (compliance), it shall be presumed that no amount is payable for expenses in ex-

cess of income and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a purchaser or the purchaser's successor in interest has failed to furnish the written itemized statement within 15 days after the request therefor is made by the regional director (compliance), or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, a payment for excess expenses shall be made after the redemption within a reasonable time following the verification by the regional director (compliance) of a written itemized statement submitted by the purchaser or the purchaser's successor in interest or the resolution of the disagreement as to the amount properly payable for excess expenses.

(4) *Payments made by purchaser or the purchaser's successor in interest to a senior lienor.* (i) The amount to be paid upon a redemption by the United States shall include the amount of a payment made by the purchaser or the purchaser's successor in interest to a holder of a senior lien to the extent a request for the reimbursement thereof (made in accordance with paragraph (b)(4)(ii) of this section) is approved as provided under paragraph (b)(4)(iii) of this section. This paragraph applies only to a payment made after the foreclosure sale and before the redemption to a holder of a lien that was, immediately prior to the foreclosure sale, superior to the lien foreclosed. A payment of principal or interest to a senior lienor shall be taken into account. Generally, the portion, if any, of a payment which is to be held in escrow for the payment of an expense, such as hazard insurance or real property taxes, is not considered under this paragraph. However, a payment by the escrow agent of a real property tax or special assessment lien, which was senior to the lien foreclosed, shall be considered to be a payment made by the purchaser or the purchaser's successor in interest for purposes of this paragraph. With respect to real property taxes assessed after the foreclosure sale, see paragraph (b)(3)(i) of this section, relating to excess expenses incurred by the purchaser.

(ii) Before the expiration of the redemption period applicable under paragraph (a)(2) of this section, the regional director (compliance) shall, in any case where a redemption is contemplated, send notice to the purchaser (or the purchaser's successor in interest of record) by certified or registered mail or hand delivery of the right under paragraph (b)(4) of this section to request reimbursement (payable in the event the right to redeem under 26 U.S.C. 7425(d) is exercised) for a payment made to a senior lienor. No later than 15 days after the notice from the regional director (compliance) is sent, the request for reimbursement shall be mailed or delivered to the office specified in such notice and shall consist of:

(A) A written itemized statement, signed by the claimant, of the amount claimed with respect to a payment made to a senior lienor, together with the supporting evidence requested in the notice from the regional director (compliance), and

(B) A waiver or other document that will be effective upon redemption by the United States to discharge the property from, or transfer to the United States, any interest in or lien on the property that may arise under local law with respect to the payment made to a senior lienor.

Upon a showing of reasonable cause, a regional director (compliance) may, in that official's discretion and at any time before the expiration of the applicable period for redemption, grant an extension for a reasonable period of time to submit, amend, or supplement a request for reimbursement. Unless a request for reimbursement is timely submitted (determined with regard to any extension of time granted), no amount shall be payable to the purchaser or the purchaser's successor in interest on account of a payment made to a senior lienor if the right to redeem under 26 U.S.C. 7425(d) is exercised. A waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section shall be treated as effective only to the extent of the amount included in the redemption price under this paragraph. If the right to redeem is not exercised or a request for reimbursement is withdrawn, the regional director (compliance) shall, by cer-

tified or registered mail or hand delivery, return to the purchaser or the purchaser's successor any waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section as soon as is practicable.

(iii) A request for reimbursement submitted in accordance with paragraph (b)(4)(ii) of this section shall be considered to be approved for the total amount claimed by the purchaser, and payable in the event the right to redeem is exercised, unless the regional director (compliance) sends notice to the claimant, by certified or registered mail or hand delivery, of the denial of the amount claimed within 30 days after receipt of the request of 15 days before expiration of the applicable period for redemption, whichever is later. The notification of denial shall state the grounds for denial. If such notice of denial is given, the request for reimbursement for a payment made to a senior lienor shall be treated as having been withdrawn by the purchaser or the purchaser's successor and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a request for reimbursement is treated as having been withdrawn under the preceding sentence, payment for amounts described in paragraph (b)(4) of this section may, in the discretion of the regional director (compliance), be made after the redemption upon the resolution of the disagreement as to the amount properly payable under paragraph (b)(1)(iv) of this section.

(c) *Certificate of redemption*—(1) *In general.* If a regional director (compliance) exercises the right of redemption of the United States described in paragraph (a) of this section, the regional director (compliance) shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law or if the officer designated by local law fails to issue the necessary documents, the regional director (compliance) is authorized to issue a certificate of redemption for the property redeemed by the United States.

(2) *Filing.* The regional director (compliance) shall, without delay, cause either the documents issued by the local officer or the certificate of redemption executed by the regional director (compliance) to be filed with the local office where certificates of redemption are generally filed. If a certificate of redemption is issued by the regional director (compliance) and if the State in which the real property redeemed by the United States is situated has no office with which certificates of redemption may be filed, the regional director (compliance) shall file the certificate of redemption in the office of the clerk of the United States district court for the judicial district in which the redeemed property is situated.

(3) *Effect of certificate of redemption.* A certificate of redemption executed pursuant to paragraph (c)(1) of this section, shall constitute prima facie evidence of the regularity of the redemption. When a certificate of redemption is recorded, it shall transfer to the United States all the rights, title, and interest in and to the redeemed property acquired by the person, from whom the regional director (compliance) redeemed the property, by virtue of the sale of the property. Therefore, if under local law the purchaser takes title free of liens junior to the lien of the foreclosing lienholder, the United States takes the title free of such junior liens upon redemption of the property. If a certificate of redemption has been erroneously prepared and filed because the redemption was not effective, the regional director (compliance) shall issue a document revoking such certificate of redemption and such document shall be conclusively binding upon the United States against a purchaser of the property or a holder of a lien upon the property.

(4) *Application for release of right of redemption.* Upon application of a party with a proper interest in the real property sold in a nonjudicial sale described in 26 U.S.C. 7425(b) and § 70.204 of this part, which real property is subject to the right of redemption of the United States described in this section, the regional director (compliance) may, in that official's discretion, release the right of redemption with respect to the property. The application

for the release shall be submitted in writing to a regional director (compliance) and shall contain such information as the regional director (compliance) may require. If the regional director (compliance) determines that the right of redemption of the United States is without value, no amount shall be required to be paid with respect to the release of the right of redemption.

(26 U.S.C. 7425(d))

**§ 70.207 Civil actions by persons other than taxpayers.**

(a) *Actions permitted—(1) Wrongful levy.* If a levy has been made on property, or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim:

(i) That the person has an interest in, or a lien on, such property which is senior to the interest of the United States; and

(ii) That such property was wrongfully levied upon.

No action is permitted under 26 U.S.C. 7426(a)(1) unless there has been a levy upon the property claimed.

(2) *Surplus proceeds.* If property has been sold pursuant to levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon the claim that the person:

(i) Has an interest in or lien on such property junior to that of the United States; and

(ii) Is entitled to the surplus proceeds of such sale.

(3) *Substituted sale proceeds.* Any person who claims to be legally entitled to all or any part of the amount which is held as a fund from the sale of property pursuant to an agreement described in 26 U.S.C. 6325(b)(3) may bring a civil action against the United States in a district court of the United States to obtain the relief provided by 26 U.S.C. 7426(b)(4). It is not necessary that the claimant be a party to the agreement which provides for the substitution of